**S.B. CIVIL WRIT PETITION NO.1368/2005**

**Bagmal Jat**

**VS**

**State of Rajasthan & Anr.**

**DATE OF ORDER 14.3.2005**

**HON'BLE MR. PRAKASH TATIA, J.**

Mr. I.R.Choudhary, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner has challenged the validity of sub-clause (2) of clause 3 of the notification dated 21.2.1998 issued under the Rajasthan Foodgrain and other Essential Articles (Regulation of Distribution) Order, 1976 in which it has been provided that no member of the Rajasthan Panchayati Raj Institution of local body or any public servant shall be granted or entitled to hold or continue to hold any authorization as an authorized wholeseller/authorized fair price shop keeper under the above Rajasthan Foodgrain and other Essential Articles (Regulation of Distribution) Order, 1976. The relevant sub-clause (1) of clause(3) of the order of 1976 is as under: -

> "Provided that no Member of Rajasthan Panchayat Raj. Institution of Local Body or any Public Servant shall be granted or entitled to hold or continue to hold any authorisation as an authorised whole seller/authorized Fair Price Shop Keeper under this Order."

According to petitioner, the restriction has been imposed upon only the persons, who are members of the Rajasthan Panchayati Institution and upon the public servant whereas such restriction is not applicable to the members of the Legislative Assembly as well as upon the members of the Parliament. According to petitioner thereby the petitioner, who was holding the fair price shop has been discriminated and by the said insertion of sub-clause (1), all the members of the Rajasthan Panchayati Raj Institution have been excluded from holding licence under the above Order of 1976 for running fair price shop. Not only this, but even the persons, who were running the fair price shop were not disqualified at the relevant time, became disqualified by the notification dated 21.12.1998.

I considered the submissions of learned counsel for the petitioner. The petitioner admittedly was running the fair price shop since 1994. He contested the election for the year 2005 for the post of Member of Panchayat Samiti of the Gram Panchayat Ghagran without protest and knowing it well that in case he will be elected, his said shop licence will be cancelled. The petitioner now challenging the order of the 1998 in

the year 2005 without explaining the delay. The writ petition can be dismissed only on these grounds. Apart from above, it appears that except ground of alleged discrimination between the members of the local body and elected members of the Legislative Assembly and Members of Parliament, there is no other ground. So far as elected member of the local body, MLAs and MPs, each normally form a separate class in themselves. Even of member of each category has different functions and responsibility. Even they have different qualifications and it is also each one of them as member of local body, MLA or MP, represents the different number of persons at different level in function. It may be pointed out here that a person, who is having more than two children and one born after the cut out date, i.e., 25th Sept., 1997, is not qualified to contest the election of any of the posts under the Rajasthan Panchayati Raj Act whereas no such restriction is applicable in the case of election of the member of the Legislative Assembly and for becoming member of Parliament. The steps have been taken to improve the working of the institution by putting a restriction by the notification dated 21.12.1998, therefore, it cannot be challenged merely on the ground that it has not been made applicable to all other posts of elections at the same time. Apart from it, there appears to be no reason to hold the above provision as violative of any of the fundamental rights of the petitioner because the right to contest the election is a right given by the statute and it was his option either to

become the member of any of the body under the Rajasthan Panchayati Raj Act or not.

In view of the above, I do not find any merit in this writ petition and the same is hereby dismissed.

**(PRAKASH TATIA), J.**

c.p.goyal/-